

MARC M. SELTZER (54534)
mseltzer@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-4405
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

ANDREW J. ENTWISTLE (*Pro hac Vice*)
aentwistle@entwistle-law.com
ARTHUR V. NEALON (*Pro hac Vice*)
anealon@entwistle-law.com
ROBERT N. CAPPUCCI (*Pro hac Vice*)
rcappucci@entwistle-law.com
ENTWISTLE & CAPPUCCI LLP
299 Park Avenue, 20th Floor
New York, NY 10171
Telephone: (212) 894-7200
Facsimile: (212) 894-7272

Counsel for FNY Investment Advisers, LLC

REED R. KATHREIN (139304)
reed@hbsslaw.com
MICHAEL W. STOCKER (179083)
mikes@hbsslaw.com
KRISTEN MCCULLOCH (177558)
kristenm@hbsslaw.com
DANIELLE SMITH (291237)
danielles@hbsslaw.com
HAGENS BERMAN SOBOL
SHAPIRO LLP
715 Hearst Ave., Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001

Counsel for James Johnson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KALMAN ISAACS, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

ELON MUSK and TESLA, INC.,

Defendants.

Case No. 3:18-cv-04865-EMC

Hon. Edward M. Chen

CLASS ACTION

FNY INVESTMENT ADVISERS, LLC AND
JAMES JOHNSON'S JOINT
SUPPLEMENTAL REPLY IN FURTHER
SUPPORT OF THEIR MOTIONS FOR
CONSOLIDATION, APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL OF
SELECTION OF LEAD COUNSEL

Date: November 15, 2018

Time: 1:30 p.m.

Place: Courtroom 5, 17th Floor

*[Additional captions appear on following
pages]*

1 WILLIAM CHAMBERLAIN, on behalf of
himself and all others similarly situated,

2 Plaintiff,

3
4 vs.

5 ELON MUSK and TESLA, INC.,

6 Defendants.

Case No. 3:18-cv-04876-EMC

7 JOHN YEAGER, individually and on behalf of
8 all others similarly situated,

9 Plaintiff,

10 vs.

11 ELON MUSK and TESLA, INC.,

12 Defendants.

Case No. 3:18-cv-04912-EMC

13
14 CARLOS MAIA, on behalf of himself and all
15 others similarly situated,

16 Plaintiff,

17 vs.

18 ELON MUSK and TESLA, INC.,

19 Defendants.

Case No. 3:18-cv-04939-EMC

20 KEWAL DUA, Individually and on Behalf of
21 All Others Similarly Situated

22 Plaintiff,

23 vs.

24 ELON MUSK and TESLA, INC.,

25 Defendants.

Case No. 3:18-cv-04948-EMC

JOSHUA HORWITZ, Individually and on
Behalf of All Others Similarly Situated

Plaintiff,

vs.

ELON MUSK and TESLA, INC.,

Defendants.

Case No. 3:18-cv-05258-EMC

ANDREW E. LEFT, Individually and on
Behalf of All Others Similarly Situated

Plaintiff,

vs.

ELON MUSK and TESLA, INC.,

Defendants.

Case No. 3:18-cv-05463-EMC

ZHI XING FAN, Individually and on Behalf of
All Others Similarly Situated

Plaintiff,

vs.

ELON MUSK and TESLA, INC.,

Defendants.

Case No. 3:18-cv-05470-EMC

SHAHRAM SODEIFI, Individually and on
Behalf of All Others Similarly Situated

Plaintiff,

vs.

TESLA, INC., a Delaware corporation, and
ELON R. MUSK, an individual,

Defendants.

Case No. 3:18-cv-05899-EMC

1 FNY Investment Advisers, LLC (“First New York”) and James Johnson wish to advise
 2 the Court that on November 8, 2018, they and their counsel met and conferred by conference call
 3 to discuss the possibility of a co-leadership structure to represent, *i.e.*, non-short-seller, purchasers
 4 of Tesla common stock in the above-captioned actions. During the conference call, the parties
 5 discussed their respective backgrounds, their knowledge of the case and their commitment to
 6 prosecuting claims on behalf of Tesla common stock investors. Both First New York and James
 7 Johnson agreed that a co-leadership structure involving the appointment of both an institutional
 8 and an individual investor may best serve the interests of the proposed class of Tesla common
 9 stock investors.¹ The parties thus propose that the Court consider appointing First New York and
 10 James Johnson as Co-Lead Plaintiffs and approve their selection of Entwistle & Cappucci LLP,
 11 Susman Godfrey L.L.P. and Hagens Berman Sobol Shapiro LLP as co-lead counsel for the
 12 proposed class of purchasers of Tesla common stock.

13 As First New York and James Johnson both noted in their respective Reply briefs,² courts
 14 in the Ninth Circuit and elsewhere often consider it appropriate to appoint both an institutional
 15 and an individual investor in order to “ensure that all class members will be adequately
 16 represented in the prosecution of [the] action.” *Weisz v. Calpine Corp.*, No. 4:02-CV-1200, 2002
 17 WL 32818827, at *8 (N.D. Cal. Aug. 19, 2002); *see also Yousefi v. Lockheed Martin Corp.*, 70 F.
 18 Supp. 2d 1061, 1070 (C.D. Cal. 1999). In especially complex or unique securities cases under the
 19 PSLRA, as here, courts often prefer the appointment of both an institution and an individual
 20 because such an arrangement allows the lead plaintiffs to “represent a broader range of
 21 shareholder interests than if the Court appointed an individual or an institutional investor alone.”
 22 *Yousefi*, 70 F. Supp. 2d, at 1071. More specifically, this arrangement ensures adequate
 23 representation “in the negotiation and approval of a fair settlement, and that the settlement

24
 25 ¹ Only First New York and James Johnson have recognized both the inherent intra-class conflicts
 26 of the various Tesla investor classes as defined in the pending motions and the attendant need for
 27 separate leadership on behalf of long purchasers of Tesla common stock. As First New York and
 James Johnson have previously indicated, the proposed class of Tesla common stock purchasers
 would be well served by the appointment of both an institution and individual as co-lead
 plaintiffs. ECF Nos. 117 at 3-4; and 113 at 5-8.

28 ² *See* ECF Nos. 126 at 8; and 131 at 9.

process will not be distorted by the differing aims of differently situated claimants.” *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998). For these reasons, the proposed class would be well served by the appointment of both First New York and James Johnson – the only parties that have recognized the need for separate leadership for long purchasers of Tesla common stock.

Accordingly, First New York and James Johnson respectfully submit that – to the extent the Court considers appointment of Co-Lead Plaintiffs on behalf of long investors in Tesla common stock – such investors would be well served by the appointment of First New York and James Johnson as Co-Lead Plaintiffs, and Entwistle & Cappucci LLP, Susman Godfrey L.L.P. and Hagens Berman Sobol Shapiro LLP as Co-Lead Counsel.

Dated: November 13, 2018

/s/ Reed R. Kathrein

Reed R. Kathrein

/s/ Marc M. Seltzer

Marc M. Seltzer

**HAGENS BERMAN SOBOL SHAPIRO
LLP**

REED R. KATHREIN
MICHAEL W. STOCKER (179083)
KRISTEN MCCULLOCH (177558)
DANIELLE SMITH (291237)
715 Hearst Ave., Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001

Counsel for James Johnson

SUSMAN GODFREY L.L.P.

MARC M. SELTZER
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-4405
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

ENTWISTLE & CAPPUCCI LLP

ANDREW J. ENTWISTLE
ARTHUR V. NEALON
ROBERT N. CAPPUCCI
299 Park Avenue, 20th Floor
New York, NY 10171
Telephone: (212) 894-7200
Facsimile: (212) 894-7272

*Counsel for FNY Investment Advisers,
LLC*